IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 1691 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GNFC LTD. - Appellant(s)

Versus

UNION OF INDIA & 3 - Opponent(s)

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Appearance :
M/S TRIVEDI & GUPTA for Appellant
None for Opponent(s) : 1 - 4.
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 06/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1.The learned advocate for the appellant seeks permission to amend the appeal memorandum as per proposed draft. Permission granted. Amendment to be carried out immediately. On the basis that the amendment is carried out, the appeal is taken up for hearing.

2.The appellant has proposed the following two questions stated to arise out of impugned order of Tribunal dated 12/7/2005.

> “[1] Whether duty of excise is leviable on sale of old and unusable modvated capital goods, sold as waste and scraps, under the provisions of Rule 57S(2)(c) of the Central Excise Rules, 1944?
>
> [2] Whether scrap of machineries sold by the appellant is excisable?”

3.Heard Mr.Saxena for M/s Trivedi & Gupta, learned advocates for the appellants. The principal contention is that, any waste and scrap for being liable to duty should be products resulting as products of the process of manufacture. That in the case of the appellant, the capital goods were used for the purposes of the business of the petitioner, namely, for manufacture of the fertilizers and what is sold is the scrap of such capital goods after the capital goods have been used for the purposes of business. According to him, therefore,in light of the provisions of Section 3 of Central Excise Act, 1944, Rule 57S(2)(c) of the Central Excise Rules, 1944 (as was applicable at the relevant time), cannot be applied to the facts of the case.

4.The Tribunal has upheld the levy in light of Rule 57S(2)(c) of the Rules.

5.On a plain reading of the said Rule, it is clear that where capital goods are sold as waste and scrap, the manufacturer is bound to pay the duty leviable on such waste and scrap. Clause [c] of sub-rule (2) of Rule 57S of the Rules has to be read in light of clauses (a) and (b), which precede clause [c]. It is apparent that the Rule does not deal with the capital goods as final products, but capital goods which are used for the purposes of manufacture. The contention on behalf of the appellant that waste and scrap can be amenable to duty only when it is generated in the process of manufacture, does not merit acceptance in light of the facts of the case, for the simple reason that the appellant is not a manufacturer of capital goods. In other words, the appellant does not manufacture and sell capital goods, but uses such capital goods for the purposes of process of manufacture.

6.In these circumstances, in absence of any infirmity in the impugned order of Tribunal, no substantial question of law arises and the appeal is dismissed.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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